

Funding Guidelines – Porter Davis Customer Support Payment Scheme

29 May 2023

Purpose

Porter Davis Homes Group Pty Ltd and associated entities (Porter Davis Homes) went into liquidation on Friday 31 March 2023, leaving many of its customers without Domestic Building Insurance.

The Victorian Government is supporting Porter Davis Homes customers who signed a Housing Industry Association (HIA) Domestic Building Contract and paid a deposit which was not covered by Domestic Building Insurance. This is a one-off payment to eligible affected customers of the Porter Davis Homes Group only. Englehart Homes customers are an exception as this Porter Davis Homes Group company was not affected by the Porter Davis Homes Group liquidation and continues to trade.

How the support payment works

The payment is open to Porter Davis Homes customers that have signed a HIA Domestic Building Contract (refer section 2.1) for building work and paid a deposit but have not been covered by Domestic Building Insurance or been issued a building permit to allow work to start on their site. These customers may receive the amount they paid as a deposit, as long as it is no more than 5 per cent of the contract price.

Customers must submit all requested documentation providing evidence of their eligibility and status to initiate the payment process. Once documentation has been assessed, applicants will be notified of an outcome or may be requested to provide further information.

Those found eligible for payment will then be asked to sign and submit a terms and conditions form agreeing to the terms and conditions for the support payment and requesting bank account details for payment.

Eligible applicants must, in their terms and conditions form, agree to assign to the State of Victoria their rights under their building contract with a Porter Davis Homes Group company before receiving a support payment. This means that they will not be able to claim any further money from the liquidation of Porter Davis Homes and that the State of Victoria may seek repayment of any money paid under this agreement from the liquidator. It is strongly recommended eligible Customers should obtain independent legal advice before applying.

This program is administered on behalf of the State of Victoria by the Department of Government Services with support from the Victorian Building Authority (VBA) and the Victorian Managed Insurance Authority (VMIA).

1. Eligibility

- 1.1. To be eligible for the support payment, you must be a Porter Davis Homes customer who paid a deposit that was not covered by Domestic Building Insurance where it should have been covered. You must have:
- signed an eligible HIA Domestic Building Contract for the build of your home in Victoria with a company in the Porter Davis Homes Group or with an associated entity (not including Englehart Homes). See Appendix 2 for the list of eligible companies;
 - paid a deposit (as a lump sum or in instalments) under your HIA Domestic Building Contract to an eligible Porter Davis Homes company but had no Domestic Building Insurance (DBI) in relation to that deposit; and
 - had no building permit issued in relation to HIA Domestic Building Contract.

You must also agree, that if you are found eligible, you will:

- assign your rights under your contract to the State of Victoria. This means you cannot claim for the recovery of your deposit through the liquidation process to the extent that you have received a support payment through this program to cover your loss. The State of Victoria may seek repayment of any money paid under this agreement from the liquidator.
- 1.2. Where there is more than one signatory to the HIA Domestic Building Contract with Porter Davis Homes, one person must apply on behalf of all signatories. The applicant must attest:
- that they have authorisation and written permission from all signatories to apply on their behalf and to provide their personal information, and, if the application is successful, for the payment to be paid into a bank account where the person applying is the/an account holder;
 - that all signatories agree to assign their rights as an unsecured creditor of Porter Davis Homes Group or an associated entity to the State of Victoria if the application is found eligible and they wish to accept the payment; and,
 - that they will distribute any payment in accordance with the amount payable to each individual they have attested to representing.

2. What is an eligible HIA Domestic Building Contract?

- 2.1. An eligible contract is a signed Housing Industry Association (HIA) Domestic Building Contract with Porter Davis Homes (except for Englehart Homes) that is for the purpose of building work.
- 2.2. If you have only signed other, earlier agreements in the building planning process, such as tender contracts and holding or fixing contracts, you are not eligible to receive the support payment.

3. Ineligible applicants

- 3.1. The following Porter Davis Homes customers are not eligible for a support payment:
- developers (defined as any person or company for whom three or more homes were proposed to be built under a single domestic building contract)
 - customers who have signed a domestic building contract for a property site located outside of the State of Victoria
 - customers who have been insured by VMIA or another insurer and are therefore eligible to make an insurance claim
 - customers of Englehart Homes, as Englehart Homes is not affected by the Porter Davis Homes liquidation and continues to trade.

4. Payments

- 4.1. If you are found eligible, you will be offered a support payment for the amount you have paid as a deposit (up to 5 per cent of the contract price stated in your HIA Domestic Building Contract). This is in line with the legal maximum deposit payment under the *Domestic Building Contracts Act 1995*.

Customers who have paid deposits in excess of 5 per cent, or have paid beyond the deposit stage of a build, are not eligible to receive further payment amounts.

- 4.2. Only one support payment is available for each HIA Domestic Building Contract with Porter Davis Homes Group.
- 4.3. The payment must be made to a bank account where the person applying is the/an account holder, or to a bank account in the name of the company, or trust/trustee that is the signatory to the HIA Domestic Building Contract.

5. Key dates

Applications open	May 2023 (for three months)
Applications close	August 2023
Outcome notifications and payments	General timeframes on outcome notification and payment will be communicated on the support payment website. Individual outcome notification is subject to all attachments and information being sufficiently provided.

6. Who can apply?

- 6.1. You must be a person that has signed the HIA Domestic Building Contract to apply for the support payment.
- 6.2. Where the eligible building agreement is between an entity (such as a company or trust) and Porter Davis Homes Group or associated entities, then the person applying must be an authorised representative who can execute contracts and legally bind the applicant.

Depending on the entity type, the following people are authorised representatives and can apply on behalf of their organisation:

- Companies: a director listed at the Australian Business Register (ABR)
 - Trusts: an authorised representative of the trustee, being either the trustee (if an individual) or a director of the trustee (if a company)
 - Partnerships: a partner (a director, if the partnership involves a company).
- 6.3. You must apply separately for each HIA Domestic Building Contract that you wish to receive a support payment for.
 - 6.4. You must attest that you have the authorisation and permission of all other signatories to the HIA Domestic Building Contract to apply for a support payment and share their personal information.
 - 6.5. The person who applies must provide information from one of the following current proof of identity documents on the application form:
 - Australian passport or New Zealand passport
 - Medicare card
 - Australian driver licence or learner permit
 - Australian visa (International passport).

If proof of identity is unable to be confirmed, the applicant will receive a follow-up email with instructions on how to provide their proof of identity details.

7. How to apply

- 7.1. You must apply online at <https://assist.business.vic.gov.au/PublicForm?id=PDHCSP>. Applications must be submitted by the closure date published on the program's website. Late applications will not be accepted.
- 7.2. You must provide the following documentation in support of your application:

- A signed HIA Domestic Building Contract-with Porter Davis Homes Group Pty Ltd company or associated entities (See Appendix 2 for list).
- A final statement from a Porter Davis Homes Group or an associated entity showing payment (which may have been in instalments) of your deposit under your building contract.

If you do not have a final statement, receipts showing evidence of payment of your full deposit may be accepted.

- 7.3. If your application is found eligible, you will be notified via email, which will have a link to the terms and conditions form where you can agree to the terms and conditions of the payment, as outlined in these guidelines (and in that form), and to give details of the Australian bank account where the payment will be deposited.
- 7.4. As part of the terms and conditions, you must assign to the State of Victoria your rights under your contract with a Porter Davis Homes company relating to the building site not exceeding the amount received as a support payment.
- 7.5. If applicable you must also have sought written authorisation and permission to apply from all other signatories to your HIA Domestic Building Contract and have their agreement to assign their rights as an unsecured creditor of Porter Davis Homes Group or an associated entity to the State of Victoria.
- 7.6. By completing and submitting the terms and conditions form you are making an offer to the department (on behalf of all contract signatories) and will be bound by the terms of the offer if accepted by the department, unless varied by agreement, through a return email.

8. Assessment of eligibility

- 8.1. You will be required to confirm and attest you meet the eligibility criteria at the time of application.
- 8.2. Applications and payment will be assessed using the information and evidence provided by you and by verification with other sources as identified in 8.3.
- 8.3. As part of this process, any information provided by you may be used and disclosed by the Department of Government Services, other Victorian Government agencies and external parties to either support the delivery of the support payments or determine your eligibility. Your information will be verified against information held by the Victorian Building Authority and other insurers, the Victorian Managed Insurance Authority and against information from Porter Davis Homes Group held by the appointed liquidator. Your proof of identify information will be verified with parties external to the department where required.
- 8.4. You may be requested to provide further information or clarification to assist in assessment of your application. The Victorian Government reserves in its absolute discretion the right to refuse your application where eligibility criteria are not met, or where the applicant does not or cannot provide sufficient information in the required timeframe to assess whether eligibility criteria have been met, or where a claim cannot be supported.

8.5. Where eligibility cannot be determined

If eligibility cannot be verified sufficiently to the Department's satisfaction by evidence verification, either through the information provided by the applicant or the verification processes described in 8.2 to 8.4 above, applicants may then be considered on a case-by-case basis by the Department of Government Services at its discretion.

The applicant will be responsible for providing sufficient evidence to be considered as a special case. In such cases, the decision of the Department will be final.

This case-by-case consideration will not extend to customers of builders outside the Porter Davis Homes Group and associated entities as listed in Appendix 2 or ineligible customers at Section 3.

9. Application outcome and payment

9.1. The Department of Government Services will endeavour to notify all applicants of the outcome of their complete applications and facilitate payments in accordance with the program timelines.

There may be longer processing and assessment times and delays in notification of the outcome for applicants if:

- the applicant does not initially meet the eligibility criteria
- the application is incomplete or contains incorrect information
- further information is required to verify or validate the application as outlined in section 8.4 above
- other signatories to the HIA Domestic Building Contract have not been declared and/or have not authorised the applicant to apply for or receive the support payment
- there is difficulty in reaching the applicant or the applicant does not respond in a timely manner.

10. Terms and Conditions of application and payment

10.1. By applying to receive a support payment, you consent to the Department of Government Services collecting, using and disclosing information provided by you, within the Victorian Government and between the Victorian Government and external parties for the purposes of validating your identity and eligibility requirements and processing your application. You also consent to your information being compared to existing data held by the Victorian Building Authority and Victorian Managed Insurance Authority or other insurance provider, and Porter Davis liquidator.

10.2. To receive a support payment, you and all other signatories to the HIA Domestic Building Contract must agree to assign your rights under the contract up to the value of the support payment you received through this program. This means you will assign some or all of your rights as an unsecured

creditor of Porter Davis Homes Group or associated entity to the State of Victoria.

- 10.3. If applicable, the person applying must have written authorisation and permission to apply for and receive the payment from all other signatories to the same HIA Domestic Building Contract and that those signatories are aware of the terms and conditions for payment under this scheme. The written permission document must be kept as a record by the applicant for audit purposes and provided on request.
- 10.4. You and any other signatories to the contract must acknowledge that you have a duty of disclosure to accurately share information that could impact the outcome of your application.

By applying, you are declaring that the information provided in the application form and supporting documentation is true, accurate and not misleading about a material fact.

- 10.5. Fraudulent or deceptive claims

If any information in the application or claims for payment is found to be false, misleading or fraudulent (as determined by the administering department in its discretion), the payment will be repayable on demand and the Victorian Government reserves the right to take further action, including referring the applicant to the relevant law enforcement agency or regulator. Providing inaccurate, untrue, or misleading information may result in an offence being committed and serious penalties may apply.

- 10.6. Applications may be subject to audit by the Victorian Government or its representatives for a period of up to three years following receipt of the payment to determine whether the application and information provided was compliant.

11. Privacy statement

- 11.1. Information you provide, which includes personal information, will be collected, used and disclosed by the Department of Government Services for the purpose of assessing your application for eligibility, to make payments and for the State of Victoria to seek repayment of any money that is paid under this program if the application is found false, misleading or fraudulent (as per section 10.5).
- 11.2. By applying for a payment, applicants consent to the collection, use and disclosure of information as outlined in these guidelines. The Department of Government Services as an administrator may contact you to clarify your submitted information, and for program review, reporting, monitoring, audit and program evaluation purposes.
- 11.3. The Department of Government Services will complete a range of eligibility assessments that may include data matching to clarify the accuracy and quality of information supplied by you. The data matching may occur on the information and personal information provided in your application, your supporting evidence and your terms and condition form.

- 11.4. In the case of suspected fraud, the information you have provided may also be shared with law enforcement agencies and regulators.
- 11.5. If there is an intention to include personal information about a third party, such as an additional owner, in the application, the person applying must ensure the third party is aware of and consents to the contents of this privacy statement and the terms and conditions of the payment.
- 11.6. Any personal information about the applicant applying or a third party will be collected, held, managed, used, disclosed or transferred and stored in accordance with the provisions of the *Privacy and Data Protection Act 2014 (Vic)* and other applicable laws.
- 11.7. For enquiries about access to, or correction of, your personal information, please refer to the program webpage. For other concerns regarding the privacy of personal information and Department of Government Services privacy policy can be emailed to privacy@dgs.vic.gov.au.

12. Other information

- 12.1. The Department of Government Services reserves the right to amend these guidelines and terms at any time as it deems appropriate (subject to appropriate notice being given either by publication on the support payment website or by email to applicants and recipients).
- 12.2. Receiving a support payment may result in financial, taxation, legal or other implications for the recipient. It is strongly recommended applicants seek independent professional advice in regard to these possible impacts. Applicants may also seek advice from the Australian Tax Office on 1800 806 218 if they have questions about their individual situation.
- 12.3. The Victorian Government may ask you to complete a survey on how the payment has helped you. This information will be treated in accordance with the privacy statement detailed above.
- 12.4. If an unsuccessful applicant considers that their application has been incorrectly assessed, they can lodge a complaint. The complaint must be received within 60 days from the date the department notifies the applicant of the outcome of the application. If a complaint is not received within 60 days, the decision will be final. For more information on complaint lodgement see the support payment website.

13. Contact

For more information and support, please contact us at customer.support@dgs.vic.gov.au

Appendix 1: Definitions

Term	Definition
DBI	Domestic Building Insurance
DBCA	<i>Domestic Building Contracts Act 1995</i>
VMIA	Victorian Managed Insurance Authority
Customer	A customer of Porter Davis Homes Group and associated entities affected by the liquidation of the Porter Davis Homes Group
Developer	For the purposes of the support payment any person or company for whom three or more homes were proposed to be built under a single domestic building contract
HIA Domestic Building Contract	A Housing Industry Association Domestic Building Contract is a signed contract called a Housing Industry Association (HIA) Domestic Building Contract, also described as a 'New Homes Contract' or 'Domestic Building Contract'
Application form	The application to provide information and evidence of eligibility for the support payment
Terms and Conditions form	The contract with the State of Victoria where a successful applicant agrees to the terms and conditions of the support payment, includes bank account details.

Appendix 2: Eligible Porter Davis companies Contract

Porter Davis Homes Group and associated entities
PDH Projects Pty Ltd (Receiver Managers Appointed/ in Liquidation)
PDH Displays Pty Ltd (Receiver Managers Appointed/ in Liquidation)
Barrett Property Group Western Region Pty Ltd (in Liquidation)
Barrett Property Group Pty Ltd (in Liquidation)
PDH Vic Pty Ltd (in Liquidation)
BPS Property Group Pty Ltd (in Liquidation)